

**Duke, Daphne**

284604

**From:** Melchers, Joseph

**Sent:** Monday, May 13, 2019 2:58 PM

**To:** Scott Elliott <[selliott@elliottlaw.us](mailto:selliott@elliottlaw.us)>

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**Subject:** Procedural Matter Regarding Order Date in Docket Nos. 2018-318-E and 2018-319-E

Mr. Elliott:

In Docket Nos. 2018-318-E and 2018-319-E, you have requested that Messrs. Dong and Stark "provide the parties with the analysis by which the Commission concludes it may issue its order(s) May 21<sup>st</sup>." As a courtesy, I am providing the parties with my analysis. Messrs. Dong's and Stark's emails stated: "Pursuant to § 58-27-870, the Commission is currently planning to issue the order(s) . . . on Tuesday, May 21<sup>st</sup>." The emails were sent to the parties as voluntary procedural information, as there is no requirement in the statute that the Commission provide notice of when it intends to issue an order. Instead, the statute states:

(B) When the proposed changes relate to rates or tariffs, the commission must rule and issue its order approving or disapproving the changes within six months after the date the schedule is filed.

(C) Should the commission fail to issue an order within the period prescribed in this section, then upon written notice by any party to the commission of that fact, the commission shall have an additional ten days from the receipt of the notice to issue the required order.

You will note that, under the statute's terms, the Commission has no discretion as to whether to rule within the 6 month period. In contrast, the statute does provide for a potentially open-ended period for the Commission to actually issue its order, bounded by a 10 day "clock" that starts to run upon "notice by any party to the Commission." Under this framework, the Commission, if need be, may wait to actually issue its order, constrained by the potential filing of a notice by a party, thereby starting the 10 day period. Particularly because the DEC and DEP rate cases were filed on the same day, and the hearings have been extensive and significantly litigated, the Commission has found it impossible to issue orders in both cases within 6 months. Indeed, that was particularly apparent in the DEP case because the ruling itself could not come until the end of the six month period. Thankfully, the statute contemplates such situations. Under § 58-27-870, the earliest that the Commission could be required to issue an order in either case would be Monday, May 20<sup>th</sup>, if a party had filed notice on the first day after the six month period had run. That did not occur. However, the Commission did not plan to wait until such a notice was filed. Instead, it communicated its intention to issue the orders in DEP and DEC on Tuesday, May 21<sup>st</sup> – information that we provided not out of necessity but of courtesy. On the basis stated, the Commission will issue orders in both cases by May 21<sup>st</sup>.

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**Sent:** Saturday, May 11, 2019 2:06 PM

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**Cc:** Melchers, Joseph <[Joseph.Melchers@psc.sc.gov](mailto:Joseph.Melchers@psc.sc.gov)>

**Subject:** [External] RE: Procedural Matter Regarding Order Date in Docket No. 2018-318-E

David, Thank you for your email informing that the Commission will issue the order in the above May 21<sup>st</sup>. However, I have questions about the Commission's analysis that leads it to conclude that the order may be issued May 21<sup>st</sup>. The web site shows the Duke and Progress applications were filed November 8, 2018. The web site shows the orders to be due May 8<sup>th</sup>. I understand 6 months to be 182-183 days. Conservatively, the order would have been due May 9<sup>th</sup> by my calculations. I understand SC Code Ann. Section 58-27-870 to authorize an additional 10 days to issue a final order, but it is not clear to me that the grounds for the 10 day extension exist. I am not aware of a request or demand by any party that the Commission issue its order May 21<sup>st</sup>. If helpful, am happy for this email to constitute a request that the order be issued within ten days as permitted by statute. I may be unduly concerned, but would request that you provide the parties with the analysis by which the Commission concludes it may issue its order May 21<sup>st</sup>. Thanks again.

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**From:** Stark, David <[david.stark@psc.sc.gov](mailto:david.stark@psc.sc.gov)>

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**Subject:** Procedural Matter Regarding Order Date in Docket No. 2018-318-E

Parties:

Pursuant to § 58-27-870, the Commission is currently planning to issue the order in 2018-318-E on Tuesday, May 21st. If you have any questions, please let me know.

Regards,

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 Attorney  
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